

**GREGORY A. CHAIMOV**, OSB #822180

gregorychaimov@dwt.com

**TIM CUNNINGHAM**, OSB #100906

timcunningham@dwt.com

**DAVIS WRIGHT TREMAINE LLP**

1300 SW 5<sup>th</sup> Ave, Ste 2400

Portland, Oregon 97201-5610

Telephone: 503-241-2300

Facsimile: 503-778-5299

**JAMES C. GRANT** (*pro hac vice* application to be filed)

jamesgrant@dwt.com

**AMBIKA K. DORAN** (*pro hac vice* application to be filed)

ambikadoran@dwt.com

**THOMAS J. WYRWICH** (*pro hac vice* application to be filed)

tomwyrwich@dwt.com

**DAVIS WRIGHT TREMAINE LLP**

1201 Third Avenue, Suite 2200

Seattle, Washington 98101

Telephone: 206-622-3150

Facsimile: 206-757-7700

Attorneys for Plaintiff HomeAway.com, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

AT PORTLAND

HOMEAWAY.COM, INC.,

Plaintiff,

v.

CITY OF PORTLAND,

Defendant.

Case 3:17-cv-00091-PK

**DECLARATION OF BILL FURLONG  
IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER**

I, Bill Furlong, declare:

1. I am Vice President of North American business for HomeAway.com, Inc. ("HomeAway"). I make this statement from personal knowledge and am competent to testify to the matters herein.

2. Since 2006, HomeAway has operated an online forum that allows property owners to list their properties for short-term rentals and connect with individuals who are looking to rent a house or apartment when visiting a city. Three of HomeAway's websites are directed primarily to listings and travelers in the United States: HomeAway.com, VRBO.com, and VacationRentals.com. These sites provide listings and allow owners to connect with travelers in all fifty states. Approximately 400 listings in the City of Portland currently appear on HomeAway's websites, and listings across HomeAway's websites are changing on a daily basis, whether listings are revised, added, or removed.

3. HomeAway does not own or operate any properties and is not a party to rental transactions between owners and travelers. Instead, HomeAway's websites provide a forum for owners to advertise their properties and users to review and find properties. Listing owners arrange bookings and rentals with travelers directly, sometimes through the HomeAway website.

4. Owners can use HomeAway's services in one of two ways. First, they can buy subscriptions to list their properties for a specified period of time (such as a year). Second, they may select a pay-per-booking option that requires them to pay a percentage of the value of a confirmed booking.

5. To list a property on a HomeAway website, an owner must register for an account. After that, the owner can create a listing by providing information about the property, the rental rate, and other details. Upon providing this information, the listing appears on the HomeAway website almost immediately. HomeAway does not review listings before they appear on the website. Attached as **EXHIBIT 1** is a true and correct copy of the forms provided to owners who wish to create a listing.

6. Owners and travelers can make arrangements to book and rent properties in several ways. They can message each other through HomeAway's websites (a service called HomeAway Secured Communication), or by providing or exchanging telephone numbers or personal email addresses and communicating with one another directly. Since December 2013,

HomeAway has also offered hosts and guests the option to make reservations and payments online, the latter through a third-party service.

7. Many bookings and rental transactions in Portland occur by way of direct communications between owners and travelers. For these transactions, the only data HomeAway has is online communications between owners and travelers stored in HomeAway's systems. These communications may show users reached agreements for bookings or rentals. This is a significant amount of information. Reviewing all of it to identify what communications reflect (or may reflect) rentals would be enormously burdensome.

8. With regard to reservations made through HomeAway's online booking feature, data that a traveler requested a booking does not always mean that an owner accepted or confirmed the reservation, or, even if so, that the reservation was not later cancelled so that no rental ever took place. And, for instances when an owner has used the online payment feature, HomeAway does not act as the merchant of record, and data about payments (e.g., charges to travelers' credit cards as well as any adjustments, reversals or refunds for rentals that did not occur) are handled by the third-party processor responsible for these transactions.

9. HomeAway makes clear that owners are responsible for knowing and complying with the relevant laws. For example, owners listing on HomeAway agree that "they are responsible for and agree to abide by all laws, rules, ordinances, or regulations applicable to the listing of their rental property and the conduct of their rental business, including but not limited to any and all laws . . . relating to . . . permits or license requirements." Attached as **EXHIBIT 2** is a true and correct copy of HomeAway's Terms and Conditions (as last updated July 1, 2016).

10. HomeAway's systems collect and retain extensive amounts of information and data supplied by listing owners and travelers. For example, our systems retain the information provided by owners for each of their listings, communications between owners and travelers through the website, information stored for and accessible by users in their accounts (travelers can also set up accounts for their communications and use of HomeAway services), and data

about online reservations and use of the online payment feature. HomeAway collects and retains this information for the use of owners and travelers using HomeAway's systems and services.

11. HomeAway takes steps to safeguard owners' personally identifying information, as it does with respect to information provided by travelers using its websites. Because of these practices, customers have come to expect we will respect the privacy of their information.

12. I understand that the City of Portland (the "City") has enacted a new ordinance regarding short-term residential rentals.

13. HomeAway does not review listings before they are published and therefore does not know whether a property offered for rental has met any legal requirements. I am not a lawyer and so cannot speak to the effect of the language of Portland's ordinance, but at a minimum, it appears that every time a host seeks to publish a listing for a unit in Portland, HomeAway would have to somehow verify whether a property has an applicable permit or case file number. Therefore, every time a listing owner attempts to create a listing, he or she may no longer be able to have it published immediately. This would significantly slow the process of creating an ad and booking a rental, depriving owners and travelers of key benefits of HomeAway websites—speed and efficiency. It would also cost HomeAway considerably more, as it would have to hire employees to manage this process.

14. The ordinance also appears to require that HomeAway—as an "Operator"—ensure before allowing a host to publish any listing that the owner of every "accessory Short-Term Rental," as defined by the Portland City Code, has met "all applicable legal requirements." I am not familiar with all of the legal requirements imposed by the Code, but I understand that short-term rental owners in Portland may rent only a certain number of bedrooms and only to a certain number of guests and must install smoke and carbon monoxide detectors in certain areas, ensure the bedrooms rented meet Building Code requirements, pass a physical inspection every six years, provide notice to their neighbors, and register as a business, among other requirements. Although owners might provide information to HomeAway about the first two of these

requirements (number of bedrooms and number of travelers), HomeAway has no way of knowing whether an owner has in fact complied with these or other requirements.

15. Owners listing their properties on HomeAway websites must affirm that they have complied with all applicable laws. Requiring HomeAway to verify their compliance would make it extraordinarily difficult, if not impossible, to publish listings by owners of properties in Portland. HomeAway would have to decide between removing listings in Portland altogether and committing employees to research all owners' listings and inspect properties (with substantial costs), and even then could not be assured that HomeAway would not be subject to liability if the City believed a listing or property was non-compliant. In any event, requiring such reviews would significantly encumber and delay owners' listings and use of the HomeAway websites by owners and travelers, effectively destroying speed and efficiency.

16. Requiring HomeAway to disclose customer information, such as names, addresses, contact information, and potentially the number of nights a rental was occupied and the amounts paid for the occupancy would undermine customers' confidence in HomeAway's commitment to keeping their information private and damage its business.

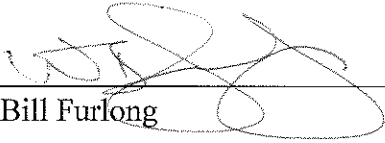
17. Finally, if HomeAway faces civil liability for not complying with the law's new requirements, this will likely reduce the number of listings available on our websites, and the speed with which they appear on the sites. The HomeAway websites are constantly changing, with owners creating, modifying, and removing listings, and travelers continually making arrangements for rentals. If HomeAway has to review every listing, this process could be disrupted, for days or even weeks. Further, given the prospect of hefty fines, if HomeAway has any doubt about the lawfulness of a particular listing, it will likely have to remove the listing, even if the listing owner has complied with the law.

I declare under penalty of perjury that the foregoing is true and correct.

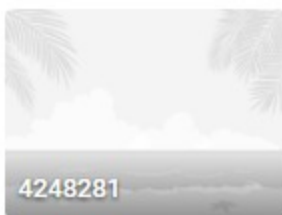
Executed this Friday, January 20, 2017, at Austin, Texas.

//

//

  
Bill Furlong

# **EXHIBIT 1**



## My Properties

## Dashboard

## RESERVATION MANAGER

## Inbox

## Calendar

## Reservations

## Rates

## Reviews

## PERFORMANCE

## Analytics

## Listing Quality

## Marketing Tools

## ACCOUNT

## Listing Details

## Personal Details

## Settings

## To publish your listing, complete these 7 steps

Your listing ID is 4248281

[Preview](#)

4 of 7 steps completed

[Continue with property details](#)

Where is your rental located?

29 Hans Egedesvej Nuuk GL 3900 Kitaa  
Verified.

Tell us a little more about your property

0 bedroom, 1 bath, mill (accommodates 14)  
Add Bedrooms.

Add great looking photos

Provide at least 6 photos to publish.



Protect your account

Your account is setup with 2-step verification.



Set up your traveler payment options

HomeAway Payments enables travelers to pay with debit or credit cards.  
Low processing fees and no setup, termination, or monthly fees.

Set up your pricing

Your rates, taxes, and fees are complete.



Specify your rental policies

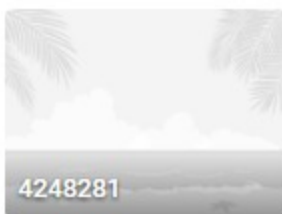
Review your payment, cancellation, and damage protection policies.



## Listing Details

Your current listing type is  
Subscription



[Back to dashboard](#)

## CHECKLIST

- ✓ [Validate your location](#)
- ✓ **Property details**
- ✓ [Upload photos](#)
- ✓ [Account security](#)
- ✓ [Payments setup](#)
- ✓ [Pricing](#)
- ✓ [Policies](#)

## Describe your property

Start out with a descriptive headline and a detailed summary of your property.

## Headline

LM 121.4248281.4655223

58 characters left

## Property description

This property is used by HomeAway to conduct real time testing to ensure that the experiences of our Owners and Travelers meet exceptions. Since this is only a test listing, inquiries to stay at this location will be ignored. HomeAway hopes you find the images and content enjoyable! Thanks for stopping by our test property.

This property is used by HomeAway to conduct real time testing to ensure that the experiences of our Owners and Travelers meet exceptions. Since this is only a test listing, inquiries to stay at this location will be ignored. HomeAway hopes you find the images and content enjoyable! Thanks for stopping by our test property

9349 characters left

Property type

Studio



Bedrooms

1

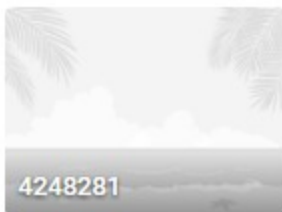
Accommodates

14

Bathrooms

1

[Back](#)[Next](#)



[Back to dashboard](#)

## CHECKLIST

- ✓ [Validate your location](#)
- ✓ [Property details](#)
- ✓ [Upload photos](#)
- ✓ [Account security](#)
- ✓ [Payments setup](#)
- ✓ [Pricing](#)
- ✓ [Policies](#)

Add great looking photos

Add photos to show off your place. You need at least 6 and can add up to 24. Minimum dimension requirements are 1920x1080. [Don't have the right photos? Consult a professional near you.](#)

Drop photos here

or

[SELECT PHOTOS TO UPLOAD](#)

0 of 24 uploaded. 24 more required. Photos must be JPEG and at least 1920x1080 pixels.

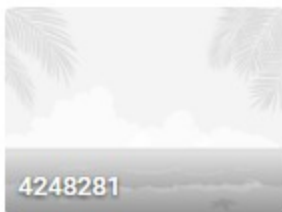
[Back](#)

[Next](#)

[Feedback](#)

Use of this Web site constitutes acceptance of the HomeAway.com [Terms and Conditions](#) and [Privacy Policy](#).

©2006-Present HomeAway.com, Inc. All rights reserved.

[Back to dashboard](#)

## CHECKLIST

- ✓ Validate your location
- ✓ Property details
- ✓ Upload photos
- ✓ Account security
- ✓ Payments setup
- ✓ Pricing
- ✓ Policies

## Protect your account

It's easier than you think for someone to steal your password. Send a verification code to your phone to confirm your identity.

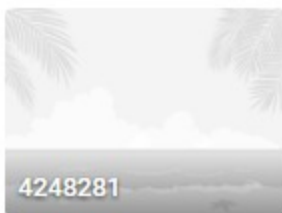
You already have setup a number with 2-Factor Authentication (2FA).

You can setup additional numbers by going to [Account Settings](#)

[Back](#)[Next](#)[Feedback](#)

Use of this Web site constitutes acceptance of the HomeAway.com [Terms and Conditions](#) and [Privacy Policy](#).

©2006-Present HomeAway.com, Inc. All rights reserved.



[Back to dashboard](#)

## CHECKLIST

☒ [Validate your location](#)

☒ [Property details](#)

☒ [Upload photos](#)

☒ [Account security](#)

☒ [Payments setup](#)

☒ [Pricing](#)

☒ [Policies](#)

## Tell us where to send your money

- More peace of mind:** HomeAway Payments is the most secure way to get paid
- Less time and hassle:** Fast cross-border Payments and Damage deposits automatically refunded
- Set-up in only two steps:** Tell us who we are paying and where the money goes. It's that easy.
- Save Money:** Low credit card processing fees — guaranteed!



## Getting Started

You will need the following information in order to complete your payments onboarding:

- Your checking account information.
- Your personal identification information.

I conduct my banking in...

United States



I am onboarding as an...



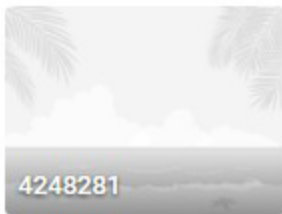
Individual



Property Manager

Next





[Back to dashboard](#)

## CHECKLIST

- ✓ [Validate your location](#)
- ✓ [Property details](#)
- ✓ [Upload photos](#)
- ✓ [Account security](#)
- ✓ [Payments setup](#)
- ✓ [Pricing](#)
- ✓ [Policies](#)

## Tell us where to send your money

- 🔒 **More peace of mind:** HomeAway Payments is the most secure way to get paid
- 🕒 **Less time and hassle:** Fast cross-border Payments and Damage deposits automatically refunded
- ✓ **Set-up in only two steps:** Tell us who we are paying and where the money goes. It's that easy.
- 💳 **Save Money:** Low credit card processing fees – guaranteed!

## ✓ Getting Started

### 🔒 Confirm your contact information

Legal First Name

Legal Last name

Country

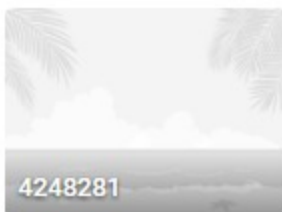
Address (Current physical residence address)

Mobile Phone

Email

[Back](#)

[Next](#)



[Back to dashboard](#)

## CHECKLIST

✓ [Validate your location](#)

✓ [Property details](#)

✓ [Upload photos](#)

✓ [Account security](#)

✓ [Payments setup](#)

✓ [Pricing](#)

✓ [Policies](#)

## Tell us where to send your money

- More peace of mind:** HomeAway Payments is the most secure way to get paid
- Less time and hassle:** Fast cross-border Payments and Damage deposits automatically refunded
- Set-up in only two steps:** Tell us who we are paying and where the money goes. It's that easy.
- Save Money:** Low credit card processing fees – guaranteed!

✓ [Getting Started](#)

✓ [Confirm your contact information](#)

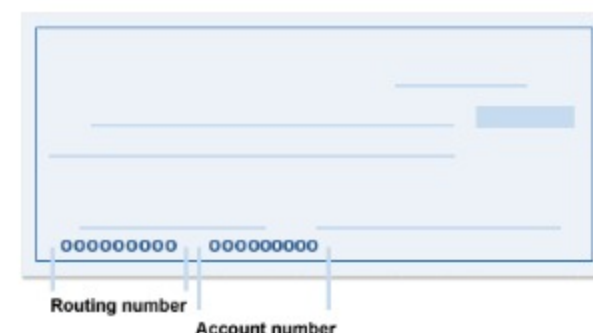
[Provide your banking details](#)

Routing Number

Checking Account Number

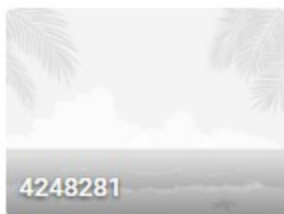


Re-Enter Checking Account Number



[Back](#)

[Next](#)



[Back to dashboard](#)

## CHECKLIST

✓ [Validate your location](#)

✓ [Property details](#)

✓ [Upload photos](#)

✓ [Account security](#)

✓ [Payments setup](#)

✓ [Pricing](#)

✓ [Policies](#)

## Tell us where to send your money

- More peace of mind:** HomeAway Payments is the most secure way to get paid
- Less time and hassle:** Fast cross-border Payments and Damage deposits automatically refunded
- Set-up in only two steps:** Tell us who we are paying and where the money goes. It's that easy.
- Save Money:** Low credit card processing fees — guaranteed!

## ✓ Getting Started

## ✓ Confirm your contact information

## ✓ Provide your banking details

## Verify who you are

To comply with anti-fraud regulations we require proof of identity. This information is used solely for the purpose of identity verification and will not be sold or used for marketing purposes. Your consent to that sharing is evidenced by completion of this form.

Please provide identification for . .

ID Issuing Country

United States



Last four of SSN

XXXX

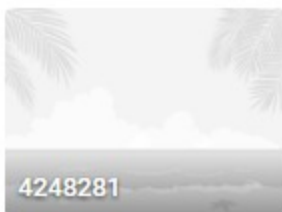
Date of birth

MM/DD/YYYY

☐ I hereby agree to the [Client Service Agreement](#)

[Back](#)

[Submit](#)

[Back to dashboard](#)

## CHECKLIST

[✓ Validate your location](#)[✓ Property details](#)[✓ Upload photos](#)[✓ Account security](#)[✓ Payments setup](#)[✓ Pricing](#)  
**Rental Rates**[Taxes](#)[Fees](#)[✓ Policies](#)

How much do you want to charge?

We recommend starting with a low price to get few bookings and earn guest reviews. You can update rates at anytime.

Currency

US Dollar (USD)



Set your standard nightly rate

\$ 300.00

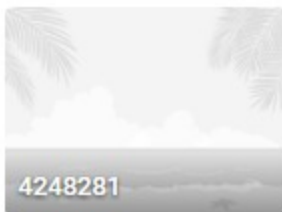
Minimum stay

3 nights

A standard rate is recommended. You can also set rates for specific date ranges.

[Additional Rate Periods](#) [Back](#)[Next \(1 of 3\)](#)





[Back to dashboard](#)

## CHECKLIST

✓ [Validate your location](#)

✓ [Property details](#)

✓ [Upload photos](#)

✓ [Account security](#)

✓ [Payments setup](#)

✓ [Pricing](#)

[Rental Rates](#)

**[Taxes](#)**

[Fees](#)

✓ [Policies](#)

What is your tax rate?

You can add a tax rate later if you do not know it now.



Enter your tax rate

%



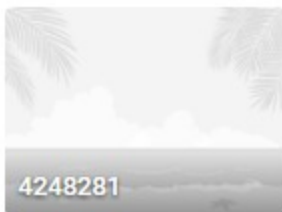
Do not include taxes (I am collecting and remitting as required)

Keep vacation rentals legal in your town; please follow all local rules, regulations, and tax requirements.

[Back](#)

[Next \(2 of 3\)](#)

[Feedback](#)

[Back to dashboard](#)

## CHECKLIST

☒ [Validate your location](#)☒ [Property details](#)☐ [Upload photos](#)☒ [Account security](#)☐ [Payments setup](#)☒ [Pricing](#)[Rental Rates](#)[Taxes](#)[Fees](#)☒ [Policies](#)

## Fees

You can add fees to your listing or skip this step. Additional fees can be added later.

Cleaning fee

\$

Are pets allowed?

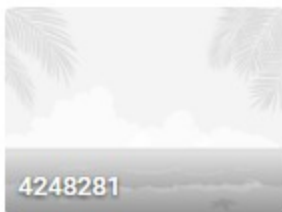


Yes



No

[Back](#)[Next \(3 of 3\)](#)[Feedback](#)

[Back to dashboard](#)

## CHECKLIST

- ✓ [Validate your location](#)
- ✓ [Property details](#)
- ✓ [Upload photos](#)
- ✓ [Account security](#)
- ✓ [Payments setup](#)
- ✓ [Pricing](#)
- ✓ [Policies](#)
  - Payment terms**
  - [Cancellation Policy](#)
  - [Protection](#)

When do travelers pay?

Select how travelers pay to book your property.

Currency

US Dollar (USD)

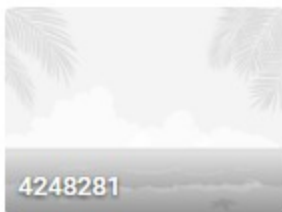
☒ Single payment - 100% due at booking☐ Two payments - 50% due at booking

50% due 30 days prior to check in

☐ Two payments - 25% due at booking

75% due 30 days prior to check in

[Back](#)[Next \(1 of 3\)](#)

[Back to dashboard](#)

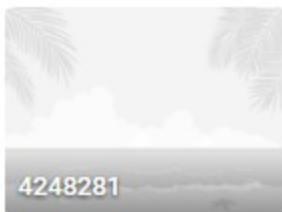
## CHECKLIST

[✓ Validate your location](#)[✓ Property details](#)[✓ Upload photos](#)[✓ Account security](#)[✓ Payments setup](#)[✓ Pricing](#)[✓ Policies](#)[Payment terms](#)[Cancellation Policy](#)[Protection](#)

## What's your cancellation policy?

Your cancellation policy defines how much you will refund a traveler if they need to cancel their trip in advance.

☒ Relaxed 14 days (100% refund); 7 days (50% refund)☐ Moderate 30 days (100% refund); 14 days (50% refund)☐ Firm 60 days (100% refund); 30 days (50% refund)☐ Strict 60 days (100% refund)☐ No refund[Back](#)[Next \(2 of 3\)](#)[Feedback](#)



[Back to dashboard](#)

## CHECKLIST

✓ [Validate your location](#)

✓ [Property details](#)

✓ [Upload photos](#)

✓ [Account security](#)

✓ [Payments setup](#)

✓ [Pricing](#)

✓ [Policies](#)

[Payment terms](#)

[Cancellation Policy](#)

**Protection**

How do you protect your property?

Protect your property from any potential accidents

☐ Collect a Refundable Damage Deposit

\$

[Back](#)

[Next \(3 of 3\)](#)

Feedback

# **EXHIBIT 2**








HomeAway (<https://www.homeaway.com>) > About Us (</info/about-us>) > Legal (</info/about-us/legal>) > Terms And Conditions

## Terms and Conditions

- ▶ Book with Confidence Guarantee™ (<https://www.homeaway.com/info/about-us/legal/terms-conditions/bookwithconfidence>)
- ▶ HomeAway Partner Program North America ([/info/about-us/legal/homeaway-partner-program-terms-and-conditions\\_NA](/info/about-us/legal/homeaway-partner-program-terms-and-conditions_NA))
- ▶ Basic Rental Guarantee from HomeAway ([/info/about-us/legal/terms-conditions/basic\\_rental\\_guarantee](/info/about-us/legal/terms-conditions/basic_rental_guarantee))
- ▶ VRBO.com (<https://www.vrbo.com/info/termsandconditions>)
- ▶ VacationRentals.com (<https://www.vacationrentals.com/info/about-us/legal/terms-conditions>)
- ▶ HomeAway.co.uk (<https://www.homeaway.co.uk/info/about-us/legal/terms-conditions>)
- ▶ OwnersDirect.co.uk (<https://www.ownersdirect.co.uk/info/about-us/legal/traveller-terms-conditions>)
- ▶ FeWo-direkt.de (<https://www.fewo-direkt.de/info/legal/agb>)
- ▶ Abritel.fr (<https://www.abritel.fr/info/qui-sommes-nous/mentions-legales/conditions-generales>)
- ▶ Homelidays.com (<https://www.homelidays.com/info/qui-sommes-nous/conditions-generales-vacancier>)
- ▶ DMCA Policy ([/info/about-us/legal/terms-conditions/dmca\\_policy](/info/about-us/legal/terms-conditions/dmca_policy))
- ▶ Community (</info/about-us/legal/terms-conditions/Community-Terms-Conditions>)
- ▶ HomeAway Software for Professionals (<http://software.homeaway.com/vacation-rentals/terms-and-conditions>)
- ▶ Expanded Distribution Network Terms and Conditions (</info/about-us/legal/terms-conditions/edn-terms-and-conditions>)
- ▶ UEFA Euro 2016™ Fans Comprehensive Rental Payment Protection Program (</info/about-us/legal/terms-conditions/uefa-euro-2016--fans-comprehensive-rental-payment-protection-pro>)
- ▶ HomeAway PMSC Partner Program North America ([/info/about-us/legal/homeaway-pmsc-program-terms-and-conditions\\_NA](/info/about-us/legal/homeaway-pmsc-program-terms-and-conditions_NA))

### Terms and Conditions

*Last updated: July 1, 2016*

By using or accessing HomeAway.com, VRBO.com, VacationRentals.com, a subdomain of any such websites, any mobile application for such websites or any other website operated by us on which these Terms and Conditions are posted via a link or otherwise (each referred to herein as a "**Site**"), you acknowledge and agree that you are subject to the following terms and conditions, as well as our **Privacy Policy** (<https://www.homeaway.com/info/about-us/legal/privacy-policy.html>), which also governs your use of the Site, and is incorporated by reference (These Terms and Conditions with the Privacy Policy shall be referred to as the "**Terms**"). Please read these Terms carefully, as they contain important information about limitations of liability and resolution of disputes through arbitration rather than court.

A user's reservation or use of a HomeAway site is bound by the terms and conditions on the HomeAway site where the reservation is finalized (and not necessarily the HomeAway site on which the property was originally listed). If there are any conflicts between the terms and conditions of the HomeAway site you found the property on and the terms and conditions of the HomeAway site you finalize a booking on, the terms and conditions of the HomeAway site where the reservation is finalized will govern. If you do not fully agree to these Terms and any other terms and conditions posted or linked to any Site, you are not authorized to access or otherwise use the Site. Under these Terms, "**use**" or "**access**" of the Site specifically includes any direct or indirect access or use of the Site or any cached version of the Site and any direct or indirect access or use of any information or content on the Site, regardless of how obtained and the term "**Site**" includes, without limitation, any cached version thereof.

Each Site is operated by HomeAway.com, Inc. (a subsidiary of Expedia, Inc.). Unless otherwise specified, the entity controlling the Site you are accessing is referred to herein as "**HomeAway**," "**we**," "**us**" or "**our**". The term "**you**" refers to the user visiting the Site, listing a property, and/or requesting a reservation on this Site, or our customer service agents. You should read through all the Terms carefully. The Terms constitute a legally binding agreement between you and HomeAway. You are not authorized to use this Site unless you are at least 18 years of age and able to enter into legally binding contracts. We do not knowingly collect the information of anyone under the age of 18. If you arrived on the Site after having been re-directed or otherwise clicking on another website, you agree that these Terms shall govern your use of this Site.

#### 1. The Site is a Venue and We are Not a Party to any Rental Agreement or other Transaction Between Users of the Site.

We urge all users to be responsible about their use of this Site and any transaction entered into as a result of either listing a property or renting a property. We do not own or manage, nor can we contract for, any vacation rental property listed on a Site. The Site provides an on-line marketplace to allow homeowners and property managers who advertise on the Site (each, a "**member**") to offer for rent in a variety of pricing formats, a specific vacation or short term rental property to potential renters or renters (each, a "**traveler**" and, collectively with a member, the "**users**"). "Members" may also include property owners or managers who originally advertised their properties on another website and their listings have been redistributed on the Site. We also may offer online booking or other tools or services to allow users to communicate with each other and enter into rental agreements or other transactions.

We are not a party to any rental or other agreement between users. This is true even if the Site allows you to book a rental or provides other ancillary products or services, as the Site may facilitate booking a rental or other tools, services or products, but we are not a party to any rental or other agreement between users. As a result, any part of an actual or potential transaction between a traveler and a member, including the quality, condition, safety or legality of the properties advertised, the truth or accuracy of the listings (including the content thereof or any review relating to any traveler or property), the ability of members to rent a vacation property or the ability of travelers to contract for properties are solely the responsibility of each user. You acknowledge and agree that you may be required to enter into one or more separate agreements, waivers or terms and conditions before making a booking or purchasing a product or service and HomeAway or one of its affiliates may place additional restrictions on your booking, product or service.

Users agree that they are responsible for, and agree to abide by, all laws, rules and regulations applicable to their use of the Site, their use of any tool, service or product offered on the Site and any transaction they enter into on the Site or in connection with their use of the Site. Members further agree that they are responsible for and agree to abide by all laws, rules, ordinances, or regulations applicable to the listing of their rental property and the conduct of their rental business, including but not limited to any and all laws, rules, ordinances, regulations or other requirements relating to taxes, credit cards, data and privacy, permits or license requirements, zoning ordinances, safety compliance and compliance

with all anti-discrimination and fair housing laws, as applicable. Please be aware that, even though we are not a party to any rental transaction and assume no liability for legal or regulatory compliance pertaining to rental properties listed on the Site, there may be circumstances where we are nevertheless legally obligated (as we may determine in our sole discretion) to provide information relating to your listing in order to comply with requests from governmental bodies in relation to investigations, litigation or administrative proceedings, and we may choose to comply with such obligations in our sole discretion.

Members who accept credit card, banking or other payment information from travelers agree to properly handle and safeguard all such information in accordance with applicable legal and regulatory requirements and best practices.

Although most travel is completed without a serious incident, travel to some destinations may involve more risk than others. We urge travelers to research the location they wish to visit and to review travel prohibitions, warnings, announcements and advisories issued by the United States Government before booking. Information may be found at [www.state.gov](http://www.state.gov) (<http://www.state.gov/>), [www.tsa.gov](http://www.tsa.gov) (<http://www.tsa.gov/>), [www.dot.gov](http://www.dot.gov) (<http://www.dot.gov/>), [www.faa.gov](http://www.faa.gov) (<http://www.faa.gov/>), [www.cdc.gov](http://www.cdc.gov) (<http://www.cdc.gov/>), [www.treas.gov/ofac](http://www.treas.gov/ofac) (<http://www.treas.gov/ofac>) and [www.customs.gov](http://www.customs.gov) (<http://www.customs.gov/>).

While we do take certain measures with a goal to assist users to avoid potentially fraudulent or other illegal activity of which we become aware, we assume no liability or obligation to take any such measures or actions. When we provide warnings or messages to users about any such activity, we do not warrant that such messages are accurate or that such messages will reach any or all users they should have reached in a timely manner or at all or that such messages or measures will prevent any harm or otherwise have any impact.

## 2. Limited License to Use the Site.

Users are granted a limited, revocable non-exclusive license to access the Site and the content and services provided on the Site solely for the purpose of advertising a property, searching for a property, purchasing or researching (for the purpose of inquiring about purchasing) any of the products or services offered on any Site, participating in an interactive area hosted on the Site or for any other purpose clearly stated on a Site, all in accordance with the Terms. Any use of the Site that is not for one of these purposes or otherwise in accordance with the Terms or as otherwise authorized by us in writing is expressly prohibited.

## 3. Unauthorized Uses of the Site.

The license to use the Site only extends to the uses expressly described herein. The license to use the Site granted to users in these Terms does not include any right of collection, aggregation, copying, scraping, duplication, display or any derivative use of the Site nor any right of use of data mining, robots, spiders or similar data gathering and extraction tools without our prior written permission; provided, however, that a limited exception from the foregoing exclusion is provided to general purpose internet search engines that use tools to gather information for the sole purpose of displaying hyperlinks to the Site, provided they each do so from a stable IP address or range of IP addresses using an easily identifiable agent and comply with our robots.txt file. "General purpose internet search engines" do not include a website or search engine or other service that provides classified listings or property rental advertisements, or any subset of the same or which is in the business of providing vacation property rental services or other services that compete with us.

Unauthorized uses of the Site also include, without limitation, those listed below. You agree not to do any of the following, unless otherwise previously and specifically agreed to by us:

- Any commercial use of the Site or any content on the Site, other than by members in good standing, or by members under a valid license to software offered on the Site (a "**valid license**");
- Any use of the Site or the tools and services on the Site for the purpose of booking or soliciting a rental of a property other than a property listed under a valid subscription or pay-per-booking product;
- Copy, reproduce, upload, post, display, republish, distribute or transmit any part of the content in any form whatsoever;
- Reproduce any portion of the Site on your website or otherwise, using any device including, but not limited to, use of a frame or border environment around the Site, or other framing technique to enclose any portion or aspect of the Site, or mirror or replicate any portion of the Site;
- Deep-link to any portion of the Site without our express written permission;
- Modify, translate into any language or computer language or create derivative works from, any content or any part of the Site;
- Reverse engineer any part of the Site;
- Sell, offer for sale, transfer or license any portion of the Site in any form to any third parties;
- Use the Site and its inquiry or booking functionality other than to advertise and/or research vacation rentals, to make legitimate inquiries to our members or any other use expressly authorized on the Site;
- Use the Site to post or transmit information that is in any way false, fraudulent, or misleading, including making any reservation or inquiry under false pretenses, or taking any action that may be considered phishing or that would give rise to criminal or civil liability;
- Post or transmit any unlawful, threatening, abusive, libelous, defamatory, obscene, vulgar, indecent, inflammatory, sexually explicit, pornographic or profane material;
- Violate, plagiarize or infringe the rights of us or third parties including, without limitation, copyright, trademark, patent, trade secrets, rights of publicity or privacy or any other intellectual or proprietary rights; or
- Use or access the Site in any way that, in our sole discretion, adversely affects, or could adversely affect, the performance or function of the Site or any other system used by us or the Site.

If you are aware of, or experience, any content, activity or communication through or in connection with the Site that appears to be in violation of the above restrictions, or in violation of any other provision of these Terms, we ask that you please inform us by contacting us as set forth under "Contact Us," below.

## 4. Proprietary Rights and Downloading of Information from the Site.

The Site and all content and information on the Site are protected by copyright as a collective work and/or compilation, under applicable U.S. and international copyright laws and conventions and database rights. You agree to abide by any and all copyright notices, information or restrictions contained in or relating to any content on the Site. Copying, storing or otherwise accessing the Site or any content on the Site other than for your personal, noncommercial use (other than in accordance with a valid listing) is expressly prohibited without prior written permission from us. As part of the rental inquiry or reservation process, for your own personal, noncommercial use and not for further distribution, you may download, display and/or print one copy of any portion of the Site. You may not modify the same, and you must reproduce our copyright notice in the form displayed on the relevant portion(s) of the Site that you desire to download, display or print.

## 5. Your E-mail Address and Data; Our Privacy Policy; Data Transmittal.

When you provide your e-mail address, name or other information to us in connection with your use or access to the Site, any service or tool provided on the Site or otherwise, you agree to allow the Site and its affiliated websites to add your e-mail address, name or other information provided to our database of users. You may receive one or more promotional e-mails from either the Site or a website of one of HomeAway's affiliates. You are welcome to opt not to receive such promotional e-mails from the Site or such affiliates' websites at any time. Please review our Privacy Policy (<https://www.homeaway.com/info/about-us/company-info/legal/privacy-policy>) for more information regarding our email and other data collection



practices and safeguards, and how to opt not to receive such emails. Your use of the Site signifies your acknowledgment of, and agreement with, our Privacy Policy (<https://www.homeaway.com/info/about-us/company-info/legal/privacy-policy>). We adhere to strong principles of privacy. You agree that we may access and use your user-contributed content in accordance with these Terms or our Privacy Policy (<https://www.homeaway.com/info/about-us/company-info/legal/privacy-policy>) and we agree that we will only disclose your user-contributed content in accordance with these Terms and our Privacy Policy (<https://www.homeaway.com/info/about-us/company-info/legal/privacy-policy>).

## 6. Identity Verification.

User verification on the Internet is difficult and we cannot, and do not assume any responsibility for, the confirmation of each user's purported identity. We encourage you to communicate directly with a traveler or member through the tools available on the Site, though even this does not assure you of the identity of the person with which you are communicating. We further encourage you to take other reasonable measures to assure yourself of the other person's identity and, for travelers, of the property and relevant details of your booking or proposed booking.

You agree to (i) keep your password and online ID for both your account with us and your email account secure and strictly confidential, providing it only to authorized users of your accounts, (ii) instruct each person to whom you give your online ID and password that he or she is not to disclose it to any unauthorized person, (iii) notify us immediately and select a new online ID and password if you believe your password for either your account with us or your email account may have become known to an unauthorized person, and (iv) notify us immediately if you are contacted by anyone requesting your online ID and password. Further, if we suspect any unauthorized access to your account, upon our request, you agree to promptly change your ID and password and take any other related action as we may reasonably request.

We discourage you from giving anyone access to your online ID and password for your account with us and your email account. However, if you do give someone your online ID and online password, or if you fail to adequately safeguard such information, you are responsible for any and all transactions that the person performs while using your account with us and/or your email account, even those transactions that are fraudulent or that you did not intend or want performed.

EACH USER ACKNOWLEDGES AND AGREES THAT: (1) NEITHER HOMEAWAY NOR ANY OF ITS AFFILIATES WILL HAVE ANY LIABILITY TO ANY USER FOR ANY UNAUTHORIZED TRANSACTION MADE USING ANY USER'S ID OR PASSWORD; AND (2) THE UNAUTHORIZED USE OF YOUR ONLINE ID AND PASSWORD FOR YOUR HOMEAWAY ACCOUNT OR YOUR EMAIL ACCOUNT COULD CAUSE YOU TO INCUR LIABILITY TO BOTH HOMEAWAY AND OTHER USERS.

Further, we may, without notice to you, suspend or cancel your listing at any time even without receiving notice from you if we suspect, in our sole discretion, that your account with us or your email account is being used in an unauthorized or fraudulent manner.

## 7. Limitations on Communications and Use of Other Users' Information; No Spam.

You agree that, with respect to other users' personal information that you obtain directly or indirectly from or through the Site or through any Site-related communication, transaction or software, we have granted to you a license to use such information only for: (i) Site-related communications that are not unsolicited commercial messages, (ii) using services offered through the Site, and (iii) inquiring about or otherwise facilitating a financial transaction between you and the other user related to the purpose of the Site (such as inquiring about or booking a property or charging a personal credit card). Any other purpose will require express permission from the user. You may not use any such information for any unlawful purpose or with any unlawful intent.

In all cases, you must give users an opportunity to remove their information from your address book or database or other records and a chance to review what information you have collected about them. In addition, under no circumstances, except as defined in this provision, may you disclose personal information about another user to any third party without the consent of the other user. You agree that other users may use your personal information to communicate with you in accordance with this provision. Further, you agree that you will protect other users' personal information with the same degree of care that you protect your own confidential information (using at minimum a reasonable standard of care), and you assume all liability for the misuse, loss or unauthorized transfer of such information.

We do not tolerate spam or unsolicited commercial electronic communications of any kind. Therefore, without limiting the foregoing, you are not licensed to add a Site user, even a user who has rented a short-term property from you or to you, to your mailing list (email or physical mail) without the user's express consent. You may not use any tool or service on the Site to send spam or unsolicited commercial electronic communications of any kind or in any other way that would violate these Terms.

## 8. Responsibility for Property Listings, Reviews and Other User-contributed content; Participation in Interactive Forums.

We have no duty to pre-screen content posted on the Site by members, travelers or other users, whether directly contributed by the user or contributed by us or a third party on behalf of the user (including, without limitation, property listings, reviews of a rental property or a traveler, participation in an interactive community, forum or blog (each an "**Interactive Forum**") or any other content provided by a user to the Site), (collectively, "**user-contributed content**"). We are not responsible for user-contributed content. "**User-contributed content**" also includes information that a user or any other person provided to a third party website or mobile application that is then provided to our Site by a tool we offer or any other exchange of user-contributed content we have authorized.

We reserve the right to decline to permit the posting on the Site of or to remove from the Site any user-contributed content that fails to meet our Content Guidelines (<https://www.homeaway.com/info/homeaway/owner-marketing/reviewguidelines>), which are incorporated by reference into these Terms, any other guidelines posted on a Site or if it otherwise violates these Terms, each as determined in our discretion. We may also remove user-contributed content if it is brought to our attention, such as by notice given to us by a user or any third party that any part of these Terms, or any other requirements governing the posting of such content, have been apparently breached in respect of such content, as determined in our discretion. Finally, we reserve the right, but do not assume the obligation, to edit a member's content or user-contributed content in a non-substantive manner solely to cause the content to comply with our Content Guidelines (<https://www.homeaway.com/info/homeaway/owner-marketing/reviewguidelines>) or formatting requirements or to provide services to members to create or improve listings (such as translation services), in accordance with information we have about the property listed. Users remain responsible for reviewing their user-contributed content to ensure it is accurate and not misleading.

At a minimum, user-contributed content must (as determined by us in our discretion):

- not infringe anyone's rights, including but limited to copyright and rights of publicity and privacy, violate the law or otherwise be inappropriate;
- not include personal information of another that can be used to identify or contact any person;
- not include unsolicited promotional content, advertising, political campaigns, contests, raffles or solicitations;
- be directly related to the Site, business service, product or forum where the content is submitted;
- not be obscene, abusive, discriminatory or illegal; or
- not be false or misleading.

All property listings on the Site are the sole responsibility of the member (who may be the owner or a property manager or duly authorized agent of the owner) and we specifically disclaim any and all liability arising from the alleged accuracy of the listings, reviews or any alleged breaches of contract on a user's part. Members are solely responsible for keeping their property information up-to-date on the Site, including, but not limited to, any and all representations about any property, its amenities, location, price and its availability for a specific date or range of dates. We do not represent or warrant that any of the copy, content, traveler or property reviews, guest book entries, property location, suitability, pricing or availability information published on the Site is accurate or up-to-date even in the case where travelers have searched for specific dates or types of properties.

We also may from time to time create new descriptions or otherwise change the location or geographic descriptions we use to identify properties in their listings and search results. Consequently, we may change the location or geographic description associated with any property listing at any time without notice. However, we assume no responsibility to verify property listing content or the accuracy of the location. Members are solely responsible for ensuring the accuracy of location, geographic and other content and location or geographic descriptions and agree to promptly correct (or contact us to correct) any inaccuracy and travelers are solely responsible for verifying the accuracy of such content and descriptions.

All other user-contributed content is the sole responsibility of the user who contributed such content, whether such user contributed the content directly or through a third-party website. Users are solely responsible for their user-contributed content and we specifically disclaim all liability for user-contributed content. The user represents and warrants that the user owns or otherwise controls and has all necessary legal rights to the user's submission and the name or other identifier used in connection with such submission including, but not limited to, all the rights necessary to provide, post, upload, input or submit the user-contributed content. We reserve the right to request a proof of ownership or permission, and to refuse to post user generated content without such proof or if such proof is, in our sole discretion, insufficient.

By submitting or authorizing user-contributed content, you grant to us and our affiliates a perpetual, worldwide, irrevocable, unrestricted, non-exclusive, royalty-free and fully paid-up license to use, copy, license, sublicense (through multiple tiers), adapt, distribute, display, publicly perform, reproduce, transmit, modify, edit and otherwise exploit the copy, the photographs and the likenesses (if any) of any of your user-contributed content, in connection with our business or the business of our affiliates. Notwithstanding the foregoing, following the termination or expiration of a property listing, we will not continue to display the user-contributed content that was displayed in such listing.

You further grant us and our affiliates the ability to register copyright in and protect the user-contributed content, including the images, copy, and content available via any member's listing, from the unauthorized use of the user-contributed content by unaffiliated third parties who may, from time to time, attempt to pirate such information via electronic or other means. This includes, but is not limited to, the right to file suit to seek injunctive relief to protect such material on behalf of and in your name. You further agree to appear and assist us—at our expense and control—with protecting such copyrighted material from unauthorized redistribution.

You agree that we may sublicense all the rights granted to us under these Terms to one or more third parties we may contract with to display all or part of the member's property listing or otherwise provide promotional or other services related to our business. In the event that you retain any rights of attribution, integrity or any other moral rights in any user-contributed content, you hereby waive your right to assert these or to require that any personally identifying information be used in connection with the user-contributed content or any derivative works thereof and affirm that you have no objection to the publication, use, modification, deletion or exploitation of the user-contributed content by us or our affiliates.

### 9. Service Fee Payable by Travelers.

We charge a service fee payable by travelers who book a property on the Site via the Site checkout. The service fee covers the use of the Site, including such features as 24/7 user support, and is calculated as a variable percentage of the total reservation amount (which may or may not include additional fees, taxes and damage deposits). Depending on the laws of the jurisdiction of the traveler and/or member, VAT may be charged on top of the service fee. The exact service fee (and any VAT, if applicable) charged will be displayed to travelers at the time of booking. The service fee plus applicable VAT will be charged after both the traveler and member accept the reservation. The service fee will only be refunded in the event a member accepts cancellation of the traveler's reservation and refunds the entire rental amount. Any taxes alleged to be owed by any taxing authority on the service fee are the responsibility of HomeAway and members have no responsibility for any such claimed tax liability. Members agree not to encourage or advise a traveler to avoid or circumvent the service fee charged by HomeAway.

### 10. Social Media or Third-Party Websites.

If the Site offers a tool or service that allows us to access or use any profile or other information about you that you have provided to Facebook or another third-party website (each a "**Social Media Site**") and you decide to use such tool or service, you acknowledge and agree that:

- The information or content that is a part of your Social Media Site profile, which you have designated as "public" (or a similar designation) (with such information or content and referred to herein as "**Social Media Content**"), may be accessed and used by us in connection with the Site;
- The Social Media Content will be considered user-generated content under these Terms and both you and we shall have the same rights and responsibilities as you that we have with respect to user-generated content under these Terms;
- In the event that the Social Media Content was for any reason misclassified with a public or similar designation or is otherwise inaccurate or to which you do not agree with for any reason, you agree to work with the Social Media Site to make any changes or resolve any disputes and acknowledge that we will not be able to provide you with recourse; and
- The operation of your profile and account with and on the Social Media Site shall continue to be governed by the terms and conditions and privacy policy of such Social Media Site.

### 11. Translations and Maps.

If any user-contributed content created by members or users is translated for display on the Site or any site of any affiliate of HomeAway, we cannot guarantee the accuracy or quality of such translation and the user is solely responsible for the review, verification and accuracy of such translation. Maps provided on the Site that are provided by Google are subject to the Google Maps terms and conditions located at: [http://www.google.com/intl/en\\_us/help/terms\\_maps.html](http://www.google.com/intl/en_us/help/terms_maps.html) ([http://www.google.com/intl/en\\_us/help/terms\\_maps.html](http://www.google.com/intl/en_us/help/terms_maps.html)).

### 12. Notification of Infringement; DMCA Policy.

We respect the intellectual property rights of others, and HomeAway does not permit, condone or tolerate the posting of any content on the Site that infringes any person's copyright. HomeAway will terminate, in appropriate circumstances, a member or traveler who is the source of repeat infringement of copyright. Should you become aware of or suspect any copyright infringement on this Site, please refer to our procedures for Notification of Copyright Infringement ([https://www.homeaway.com/info/about-us/legal/terms-conditions/dmca\\_policy.html](https://www.homeaway.com/info/about-us/legal/terms-conditions/dmca_policy.html)) (or DMCA Policy), which are incorporated by reference into these Terms.

### 13. Unsolicited Ideas and Feedback.

From time to time, users submit to us ideas or suggestions pertaining to our business, such as ideas for new or improved products or technologies, website or tool enhancements, processes, materials, marketing plans or new product names. We are under no obligation to review or consider them. If you choose to submit any ideas, original creative artwork, suggestions or other works ("**submissions**") in any form to us, then regardless of what you say, write or provide to us in connection with your submissions, the following terms shall apply. The sole purpose of this policy is to avoid potential misunderstandings or disputes in the event that any part of our business, such as our products, websites, technologies or marketing strategies, seems similar to any of your submissions. If you provide any submissions to us, you agree that: (i) your submission and its contents will automatically become the property of HomeAway, without any compensation to you; (ii) HomeAway may use or redistribute any such submission and its contents for any purpose and in any way; (iii) there is no obligation for HomeAway to review any submission; and (iv) there is no obligation to keep any submission confidential.

We welcome your feedback regarding many areas of our business. If you want to send us your feedback, we simply request that you send it to us using the "feedback" tab located on the bottom right side of the homepage, search results pages, property pages, and the owner dashboard. Please provide only specific feedback on our Site and services. Keep in mind that we assume no obligation to keep any feedback you provide confidential and we reserve the right to use or disclose such information in any manner.

**14. Software Available on the Site.**

The Site is controlled and operated by HomeAway or an affiliate of HomeAway in the United States. Software available on the Site (the "**Software**") is subject to United States export controls. No Software available on the Site or software available on any other site operated by HomeAway or an affiliate of HomeAway in the United States may be downloaded or otherwise exported or re-exported (i) into (or to a resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria or any other country to which the United States has embargoed goods, or (ii) anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Deny Orders. By using the Site, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list. All Software is the copyrighted work of HomeAway, an affiliate of HomeAway or an identified third party. Your use of such Software is governed by these Terms and the terms of any additional license agreement that accompanies or is included with such Software. If the Software is not accompanied by an additional license agreement, we hereby grant you a limited, personal and nontransferable license to use the Software for viewing and using this Site in accordance with these Terms and for no other purpose. THE SOFTWARE IS WARRANTED, IF AT ALL, ONLY ACCORDING TO THE TERMS OF THE LICENSE AGREEMENT ACCOMPANYING SUCH SOFTWARE. COPYING OR REPRODUCING ANY SOFTWARE AVAILABLE ON THIS SITE IS EXPRESSLY PROHIBITED, EXCEPT AS SPECIFICALLY PROVIDED FOR IN A LICENSE AGREEMENT ACCOMPANYING SUCH SOFTWARE.

**15. Links to Third-Party Sites.**

This Site may contain links and pointers to other Internet sites, resources and sponsors of the Site. Links to and from the Site to other third-party sites, maintained by third parties, do not constitute an endorsement by us of any third parties, the third-party sites or the contents thereof. We may also provide tools to allow interaction between the Site and a third-party site, such as a Social Media Site. We are not responsible in any way for such third-party sites or resources and your use of such sites and resources will not be governed by these Terms.

**16. Limitation of Liability.**

IN NO EVENT WILL HOMEAWAY, OR ITS PARENT COMPANY, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, CONSULTANTS, AGENTS AND/OR EMPLOYEES (COLLECTIVELY, THE "HOMEAWAY GROUP"), OR ANY THIRD-PARTY PROVIDER OF A SERVICE OR TOOL OFFERED ON ANY SITE OF A MEMBER OF THE HOMEAWAY GROUP (EACH A "THIRD-PARTY PROVIDER"), BE LIABLE FOR ANY LOST PROFITS OR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF, BASED ON, OR RESULTING FROM (A) OUR SITE, (B) THESE TERMS, (C) ANY BREACH OF THESE TERMS BY YOU OR A THIRD PARTY, (D) USE OF THE SITE, TOOLS OR SERVICES WE PROVIDE, OR ANY THIRD PARTY PROVIDER PROVIDES, RELATED TO THE BUSINESS WE OPERATE ON THE SITE, BY YOU OR ANY THIRD PARTY (E) ANY USER-CONTRIBUTED CONTENT, (F) INTERACTION BETWEEN OUR SITE AND ANY THIRD PARTY SITE, INCLUDING WITHOUT LIMITATION A SOCIAL MEDIA SITE, FACILITATED BY A TOOL OR SERVICE ON OUR SITE AND/OR (G) ANY ACTUAL OR ATTEMPTED COMMUNICATION OR TRANSACTION, INCLUDING WITHOUT LIMITATION, ANY PAYMENT TRANSACTION (EVEN IF WE OR ANY THIRD PARTY PROVIDER RECEIVES A FEE IN CONNECTION THEREWITH) BETWEEN USERS, IN EACH CASE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS AND EXCLUSIONS APPLY WITHOUT REGARD TO WHETHER THE DAMAGES ARISE FROM (1) BREACH OF CONTRACT, (2) BREACH OF WARRANTY, (3) STRICT LIABILITY, (4) TORT, (5) NEGLIGENCE, OR (6) ANY OTHER CAUSE OF ACTION, TO THE MAXIMUM EXTENT SUCH EXCLUSION AND LIMITATIONS ARE NOT PROHIBITED BY APPLICABLE LAW.

IF YOU ARE DISSATISFIED WITH THE SITE, YOU DO NOT AGREE WITH ANY PART OF THE TERMS, OR HAVE ANY OTHER DISPUTE OR CLAIM WITH OR AGAINST US, ANY THIRD PARTY PROVIDER OR ANY USER OF THE SITE WITH RESPECT TO THESE TERMS OR THE SITE, THEN YOUR SOLE AND EXCLUSIVE REMEDY AGAINST US IS TO DISCONTINUE USING THE SITE. IN ALL EVENTS, OUR LIABILITY, AND THE LIABILITY OF ANY MEMBER OF THE HOMEAWAY GROUP, TO YOU OR ANY THIRD PARTY IN ANY CIRCUMSTANCE ARISING OUT OF OR IN CONNECTION WITH THE SITE IS LIMITED TO THE GREATER OF (A) THE AMOUNT OF FEES YOU PAY TO US IN THE TWELVE MONTHS PRIOR TO THE ACTION GIVING RISE TO LIABILITY OR (B) \$100.00 IN THE AGGREGATE FOR ALL CLAIMS.

**17. Disclaimers.**

THE SITE, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS AND INFORMATION MADE AVAILABLE ON OR ACCESSED THROUGH THE SITE, IS PROVIDED "AS IS." TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER FOR THE CONTENT ON THE SITE OR THE MATERIALS, INFORMATION AND FUNCTIONS MADE ACCESSIBLE BY THE SOFTWARE USED ON OR ACCESSED THROUGH THE SITE, FOR ANY PRODUCTS OR SERVICES OR HYPERTEXT LINKS TO THIRD PARTIES OR FOR ANY BREACH OF SECURITY ASSOCIATED WITH THE TRANSMISSION OF SENSITIVE INFORMATION THROUGH THE SITE OR ANY LINKED SITE, EVEN IF WE BECOME AWARE OF ANY SUCH BREACHES. FURTHER, WE EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ACCURACY. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED ON THE SITE OR ANY MATERIALS OR CONTENT CONTAINED THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SITE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU ACKNOWLEDGE AND AGREE THAT ANY TRANSMISSION TO AND FROM THIS SITE IS NOT CONFIDENTIAL AND YOUR COMMUNICATIONS OR USER-CONTRIBUTED CONTENT MAY BE READ OR INTERCEPTED BY OTHERS. YOU FURTHER ACKNOWLEDGE AND AGREE THAT BY SUBMITTING COMMUNICATIONS OR USER-CONTRIBUTED CONTENT TO US AND BY POSTING INFORMATION ON THE SITE, INCLUDING PROPERTY LISTINGS, NO CONFIDENTIAL, FIDUCIARY, CONTRACTUALLY IMPLIED OR OTHER RELATIONSHIP IS CREATED BETWEEN YOU AND US OTHER THAN PURSUANT TO THESE TERMS.

YOU ACKNOWLEDGE AND AGREE THAT YOU WILL NOT HOLD OR SEEK TO HOLD US OR ANY THIRD PARTY PROVIDER RESPONSIBLE FOR THE CONTENT PROVIDED BY ANY USER, INCLUDING, WITHOUT LIMITATION, ANY TRANSLATION THEREOF, AND YOU FURTHER ACKNOWLEDGE AND AGREE THAT WE ARE NOT A PARTY TO ANY RENTAL TRANSACTION OR OTHER TRANSACTION BETWEEN USERS OF THE SITE. WE HAVE NO CONTROL OVER AND DO NOT GUARANTEE (OTHER THAN PURSUANT TO ANY GUARANTEE THAT MAY BE OFFERED ON THE SITE) THE SAFETY OF ANY TRANSACTION, RENTAL PROPERTY OR THE TRUTH OR ACCURACY OF ANY LISTING OR OTHER CONTENT PROVIDED ON THE SITE.

YOU FURTHER ACKNOWLEDGE THAT BY DISPLAYING INFORMATION OR PROPERTY LISTINGS IN PARTICULAR DESTINATIONS, WE DO NOT REPRESENT OR WARRANT THAT TRAVEL TO SUCH DESTINATIONS IS WITHOUT RISK AND ARE NOT LIABLE FOR DAMAGES WITH RESPECT TO TRAVEL TO ANY DESTINATION.

**18. Release; Indemnification.**

IN THE EVENT THAT YOU HAVE A DISPUTE WITH ONE OR MORE OTHER USERS OF THE SITE (INCLUDING, WITHOUT LIMITATION, ANY DISPUTE BETWEEN USERS REGARDING ANY TRANSACTION OR USER-CONTRIBUTED CONTENT) OR ANY THIRD PARTY PROVIDER OR ANY THIRD PARTY WEBSITE THAT MAY BE LINKED TO OR FROM OR OTHERWISE INTERACT WITH THE SITE, INCLUDING WITHOUT LIMITATION ANY SOCIAL MEDIA SITE, YOU HEREBY AGREE TO RELEASE, REMISE AND FOREVER DISCHARGE EACH MEMBER OF THE HOMEAWAY GROUP, EACH OF THEIR RESPECTIVE AGENTS, DIRECTORS, OFFICERS, EMPLOYEES, AND ALL OTHER RELATED PERSONS OR ENTITIES FROM ANY AND ALL MANNER OF RIGHTS, CLAIMS, COMPLAINTS, DEMANDS, CAUSES OF ACTION, PROCEEDINGS, LIABILITIES, OBLIGATIONS, LEGAL FEES, COSTS, AND DISBURSEMENTS OF ANY NATURE WHATSOEVER, WHETHER KNOWN OR UNKNOWN, WHICH NOW OR HEREAFTER ARISE FROM, RELATE TO, OR ARE CONNECTED WITH SUCH DISPUTE AND/OR YOUR USE OF THE SITE.

IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

**YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD EACH MEMBER OF THE HOMEAWAY GROUP (COLLECTIVELY, THE "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY AND COSTS INCURRED BY THE INDEMNIFIED PARTIES IN CONNECTION WITH ANY CLAIM ARISING OUT OF YOUR USE OF THE SITE OR OTHERWISE RELATING TO THE BUSINESS WE CONDUCT ON THE SITE (INCLUDING, WITHOUT LIMITATION, ANY POTENTIAL OR ACTUAL COMMUNICATION, TRANSACTION OR DISPUTE BETWEEN YOU AND ANY OTHER USER OR THIRD PARTY), ANY CONTENT POSTED BY YOU OR ON YOUR BEHALF OR POSTED BY OTHER USERS OF YOUR ACCOUNT TO THE SITE, ANY USE OF ANY TOOL OR SERVICE PROVIDED BY A THIRD PARTY PROVIDER, ANY USE OF A TOOL OR SERVICE OFFERED BY US THAT INTERACTS WITH A THIRD PARTY WEBSITE, INCLUDING WITHOUT LIMITATION ANY SOCIAL MEDIA SITE OR ANY BREACH BY YOU OF THESE TERMS OR THE REPRESENTATIONS, WARRANTIES AND COVENANTS MADE BY YOU HEREIN, INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS. YOU SHALL COOPERATE AS FULLY AS REASONABLY REQUIRED IN THE DEFENSE OF ANY CLAIM.**

**WE RESERVE THE RIGHT, AT OUR OWN EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY YOU AND YOU SHALL NOT IN ANY EVENT SETTLE ANY MATTER WITHOUT OUR WRITTEN CONSENT.**

#### **19. Disputes; Arbitration.**

HomeAway is committed to customer satisfaction, so if you have a problem or dispute, we will try to resolve your concerns. But if we are unsuccessful, you may pursue claims as explained in this section. You agree to give us an opportunity to resolve any disputes or claims relating in any way to the Site, any dealings with our customer experience agents, any services or products provided, any representations made by us, or our Privacy Policy (<https://www.homeaway.com/info/about-us/company-info/legal/privacy-policy>) ("Claims") by contacting HomeAway Customer Support (<https://help.homeaway.com/>) or 1-877-228-3145. If we are not able to resolve your Claims within 60 days, you may seek relief through arbitration or in small claims court, as set forth below.

**Any and all Claims will be resolved by binding arbitration, rather than in court**, except you may assert Claims on an individual basis in small claims court if they qualify. This includes any Claims you assert against us, our subsidiaries, users or any companies offering products or services through us (which are beneficiaries of this arbitration agreement). This also includes any Claims that arose before you accepted these Terms, regardless of whether prior versions of the Terms required arbitration.

**There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including statutory damages, attorneys' fees and costs), and must follow and enforce these Terms as a court would.**

Arbitrations will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA Consumer Rules. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, except as provided in this section. If your total Claims seek less than \$10,000, we will reimburse you for filing fees you pay to the AAA and will pay arbitrator's fees. You may choose to have an arbitration conducted by telephone, based on written submissions, or in person in the state where you live or at another mutually agreed upon location.

To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your Claims to "HomeAway Legal: Arbitration Claim Manager," at Expedia, Inc., 333 108th Ave N.E. Bellevue, WA 98004. If we request arbitration against you, we will give you notice at the email address or street address you have provided. The AAA's rules and filing instructions are available at [www.adr.org](http://www.adr.org) or by calling 1-800-778-7879.

**Any and all proceedings to resolve Claims will be conducted only on an individual basis and not in a class, consolidated or representative action.** If for any reason a Claim proceeds in court rather than in arbitration **we each waive any right to a jury trial.** The Federal Arbitration Act and federal arbitration law apply to these Terms. An arbitration decision may be confirmed by any court with competent jurisdiction.

#### **20. Additional Terms and Conditions Applicable to Online Booking.**

In addition to being bound by the other terms set forth herein, users and members who use ReservationManager™ or any other tool provided by us or a third-party provider on the Site enabling users to book and/or pay for the rental of properties online on one or more of the Sites (collectively, the "**Reservation Services**") are also bound by the following terms, which are in addition to any other terms applicable in connection with using the Site. In addition, if such Reservation Services include payment or other services provided by a third-party provider, such services are subject to the additional terms and conditions and privacy policies of such third-party providers.

We provide Reservation Services to manage inquiries, quotes, and rental agreements and to allow for payments to be made relating to the rental. Please review the following terms and the terms and conditions of any third-party provider carefully. If you do not agree to these or such third-party provider's terms, you have no right to obtain information from or otherwise continue using our Reservation Services. Failure to use our Reservation Services in accordance with the following terms of use may subject you to severe civil and criminal penalties and other liability.

By utilizing a rental agreement as part of the Reservation Services or otherwise displaying terms relating to the rental as part of the online booking process (including such terms that we may require), the traveler and member each agree to the terms and conditions set forth in the rental agreement or other such terms displayed in the booking process (including without limitation the cancellation refund policy) effective as of the date that the user indicates acceptance of the booking or rental agreement, as applicable. You hereby acknowledge and agree that (i) you are fully responsible for such terms and conditions, (ii) any rental agreement used, whether a sample provided by the Site or a rental agreement copied and pasted in ReservationManager (or other online booking tool on the Site) by either party, is used solely at their own risk and expense, (iii) nothing contained in the Reservation Services, these Terms or any sample rental agreement is a substitute for the advice of an attorney and (iv) that you have been hereby advised to obtain local legal counsel to prepare, review and revise as necessary any rental agreements to ensure compliance with federal, state and local law and their particular circumstances, and to revise the rental agreement as necessary to accurately represent the property, rules, features, etc.

There are some members, typically property managers, who use software provided by our affiliate, HomeAway Software, Inc., or a third party. Such software ("**Other Reservation Services**") may be governed by terms provided by the third parties or members making such Other Reservation Services available. Users who use such Other Reservation Services are responsible for complying with such terms in addition to our Terms.

#### **21. Responsibility for Property and Traveler Liability.**

We do not provide liability insurance protection for owners, property managers or travelers, regardless of whether a user obtains insurance coverage through one of our third-party providers. Users are solely responsible for obtaining insurance coverage sufficient to protect their properties and guests or their trip, as applicable. Members agree that they have or will obtain the appropriate insurance coverage sufficient to cover the rental of the properties they list on the Site before the arrival of their first traveler and will maintain adequate insurance coverage through the departure date of any traveler they have obtained via our Site. Further, members agree to provide us with copies of relevant proof of coverage upon request.

By utilizing and/or purchasing Property Damage Protection provided by HomeAway partner CSA Travel Protection and Insurance Services, you agree to the terms and conditions under the Property Damage Protection plan, acknowledge that you understand that certain policy restrictions apply, and agree that Property Damage Protection may be included in the rental in lieu of or in addition to a security deposit. Full details of the Property Damage Protection coverage are contained in the Description of Coverage <https://www.propertydamageprotection.com/pdf/100HADoc.pdf> (<https://www.propertydamageprotection.com/pdf/100HADoc.pdf>). Members further acknowledge and agree that they will choose the plan level with the appropriate level of coverage needed for each property and that they will offer that same plan level to all users agreeing to rent the property.

By utilizing and/or purchasing Cancellation Protection provided by HomeAway partner CSA Travel Protection and Insurance Services, you agree to the terms and conditions under the plan and acknowledge that certain policy restrictions apply. Full details of the Cancellation Protection coverage are contained in the Description of Coverage <http://www.csatravelprotection.com/certpolicy.do?productclass=G-330CSA> (<http://www.csatravelprotection.com/certpolicy.do?productclass=G-330CSA>).

## 22. GENERAL

To Contact Us for any reason, users can visit [help.homeaway.com](http://help.homeaway.com).

These Terms are governed by the Federal Arbitration Act, federal arbitration law, and for reservations made by U.S. residents, the laws of the state in which your billing address is located, without regard to principles of conflicts of laws. Use of the Site is unauthorized in any jurisdiction that does not give effect to all provisions of these Terms, including, without limitation, this paragraph. Your agreement to abide by these Terms, the Privacy Policy (<https://www.homeaway.com/info/about-us/company-info/legal/privacy-policy>) and any other terms posted on any Site.

Our relationship is that of independent contractors, and no agency, partnership, joint venture, employee-employer or franchiser-franchisee relations is intended or created by these Terms or your use of the Site. Except as explicitly stated otherwise, any notices to us shall be given by postal mail to:

HomeAway.com, Inc., Attn: Legal Department  
1011 W. Fifth Street, Suite 300, Austin, Texas 78703

When we need to send you notice, it will be sent to the email address you provide to the Site during the registration or booking or inquiry process or as later updated in your account (if applicable). Notice shall be deemed given upon receipt or 24 hours after an email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to any physical address provided to us during the registration process or as later updated in your account (if applicable). Notice shall be deemed given three days after the date of mailing to a physical address and one day after mailing to an electronic address.

We may change, suspend or discontinue any aspect of the Site at any time, including the availability of any Site features, database or content. We may also impose limits on certain features or services or restrict your access to parts or the entire Site without notice or liability. This version of the Terms became effective on the date set forth above and this version amends the version effective before such date. We reserve the right, in our sole discretion, to amend these Terms, in whole or in part, at any time. Notification of any amendment will be posted on the Site by the indication of the last amendment date at the top of these Terms and will be effective immediately. When members renew subscriptions, the terms in effect at the time of renewal will govern, provided that such terms may change as described above.

We also reserve the right, in our sole discretion and from time to time, to offer programs, products or services with unique terms and conditions that are separate from and may supersede or supplement in certain respects these Terms. In such cases, your use of the Site with respect to such special program is governed by these Terms together with the terms and conditions of such program, product or service. We reserve the right, but assume no obligation, to agree to different or conflicting terms and conditions with respect to any user. Any such terms and conditions will not be enforceable unless specifically agreed to by us.

Subscription rates and fees (including any commissions) charged for any listing that is not subscription based (such as pay-per-booking) are set at the time of a user or member's purchase of the subscription or renewal or sign up for the non-subscription-based listing, as applicable. Such rates and fees are subject to change without notice or approval. For subscription listings, the rates in effect at the time of the member's next subscription renewal, new listing or a member's upgrade or any other additional or new order of any product or service will govern for such renewal or other order. The fees and commissions applicable to pay-per-booking listings offered on one or more Sites will be displayed under the "List Your Property" tab when such product is generally made available on a Site or shall be otherwise set forth in a communication between us and the member.

The types of products and services (including the features, terms and operation thereof) offered at the time of a member's subscription or sign up for a non-subscription-based listing are subject to the descriptions displayed at the time of use and/or purchase and are subject to change without notice or approval. We further reserve the right to offer additional products, services or features for purchase at any time.

We do not separately file the Terms entered into by each user of the Site. Please make a copy of these Terms for your records by printing and/or saving a downloaded copy of the Terms on your personal computer. We may immediately terminate any user's access to or use of the Site due to such user's breach of these Terms or any other unauthorized use of the Site. However, we do not guarantee that we will take action against all breaches of these Terms. Our failure to take immediate action with respect to a breach by you or others does not waive our right to act with respect to such breach or any other breach.

These Terms constitute the entire agreement between us and you with respect to the matters set forth herein, and supersede any prior agreement between us and you with respect to your use of the Site. Headings in these Terms are for reference only and do not limit the scope or extent of such section. In the event of any conflict between these Terms and any other terms and conditions applicable to a product, tool or service offered on our Site, the Terms herein shall prevail. If any portion of these Terms is found to be invalid or unenforceable by any court of competent jurisdiction, the other provisions of these Terms shall remain in full force and effect. Further, any provision of these Terms held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

We may assign these Terms in our sole discretion. Users must obtain our prior written consent to assign these Terms, which may be granted or withheld by us in our sole discretion.

## ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO MEMBERS

In addition to being bound by the terms set forth above, members who advertise on the Site are also bound by the following terms, which are in addition to any other terms agreed to in connection with purchasing or renewing a listing.

### 23. Member Eligibility; Accuracy of Information; Listing Practice Requirements.

Our services may only be used by members who can form legally binding contracts under applicable law. If you are registering as a business entity, you represent that you have the authority to bind the entity to these Terms. Each member represents and covenants that all information submitted to us and to the Site during such member's registration with the Site shall be true and correct. Each member further agrees to promptly provide notice to the Site by contacting us as provided above under "Contact Us" regarding any updates to any such contact information previously submitted by such member to the Site.

In order to list a property on a Site, members must comply with certain requirements including but not limited to:

- Members must maintain an accurate reservation calendar on their listing(s);
- Members with online booking agree to use commercially reasonable efforts to respond to all booking requests from travelers within 24 hours of receipt of a request for booking;
- Members with online booking further agree to take commercially reasonable efforts to cause all traveler payments to be processed within 24 hours of authorization by the traveler for such payment;
- Members with online booking must respond to and accept a material number of inquiries and booking requests received in the interest of the traveler experience; and
- Members with online booking are prohibited from cancelling a material number of accepted bookings.

**24. Additional Member Representations.**

Each member represents and covenants that: (i) it owns and/or has all necessary rights and authority to offer for rent and to rent the property listed by such member; (ii) it will not wrongfully withhold a rental deposit in breach of the underlying rental agreement; (iii) it will accurately describe the subject rental property, will not fail to disclose a material defect in, or material information about, a rental property and will upon request, or otherwise from time to time, review the property listing content and location or geographic description to ensure it is accurate and not misleading; (iv) it will not wrongfully deny access to the listed property; and (v) it will not fail to provide a refund when due in accordance with the applicable cancellation policy or underlying rental agreement. In addition, if HomeAway, through one of its guarantee or warranty programs and in its sole discretion, compensates a traveler for a loss caused by acts or omissions attributable to a member, HomeAway reserves the right to pursue the member for the amount paid or contributed towards the loss.

Upon our request, each member agrees to promptly provide to us such proof of personal identification, proof that the condition, location, or amenities associated with the property are accurately described in the listing, proof of ownership of the property listed on the Site, and/or proof of authority to list the property. If you are a tenant who is listing a home, condominium, or apartment, please refer to your rental contract or lease, or contact your landlord, prior to listing the property to determine whether your lease or contract contains restrictions that would limit your ability to list your room, home, condominium or apartment. Listing your home may be a violation of your lease or contract and could result in legal action against you by your landlord, including possible eviction.

**25. Appearance in Search Results.**

We cannot guarantee that your listing will appear in any specific order in search results on the Site. Search order will fluctuate based on a variety of factors such as search parameters, subscription level purchased, listing quality, how frequently a calendar is updated, traveler preferences, member response time, reservation history, online booking capability, compliance with posted listing practice requirements, and other factors that we may deem important to the user experience from time to time ("**Best Match**"). Listing appearance or order in any particular search result may also vary depending on the search criteria used by the particular traveler. We reserve the right to apply various search algorithms or to use methods to optimize Best Match results for particular travelers' experiences and the overall marketplace. Listings placed on a non-subscription basis, such as pay-per-booking, may not always appear in search results. Listings distributed on third-party sites are not guaranteed to display on such third-party site in any particular order or at all. Search results and order may appear different on HomeAway's mobile application than they appear on the Site. To optimize the search experience for both members and travelers and improve the Best Match process, HomeAway retains the right to run occasional tests that will be limited in duration but may alter how we display listings and search results.

**26. Content, Layout and Copy.**

All content and copy edits submitted by members are subject to review and approval by us in our sole discretion. We reserve the right to refuse to publish any content that we determine in our sole discretion does not meet these Terms or is otherwise unacceptable to us. However, we assume no duty to review content and we shall not have any liability for any loss or damage resulting from the design or positioning of the copy, properties, content and/or photographs or any change made to any content, photograph or copy submitted by any member. All content must meet these Terms and our Content Guidelines (<https://www.homeaway.com/info/homeaway/owner-marketing/reviewguidelines>). We reserve the right to edit content submitted to the Site in a non-substantive manner solely to ensure that the content complies with our Content Guidelines (<https://www.homeaway.com/info/homeaway/owner-marketing/reviewguidelines>) or formatting requirements. Members are responsible for reviewing and ensuring that any content displayed on the Site appears as the member intended.

**27. Photographs.**

Photographs should depict the vacation rental as the main subject of the photograph and may not include children or adults if you do not have their legal consent or any information or images that would violate the privacy rights, intellectual property rights (including but not limited to copyright rights) or any other rights of a third party. We reserve the right to not display or to remove any photographs that we determine, in our sole discretion, do not meet these Terms or are otherwise unacceptable to us.

By submitting a photograph to us, the member represents and warrants that (a) it holds all intellectual property rights (including but not limited to all copyright rights), (b) that any people in the photograph have given permission for their likeness to be displayed in an online advertisement on the Site, (c) that the photograph accurately and fairly represents the subject of the photograph and has not been altered in any manner that would mislead a viewer of that photograph, and (d) that it will indemnify and hold harmless the Site and any member of the HomeAway Group from any cause of action arising from any misrepresentation with respect to any and all photographs so submitted or in the event of claims that the use of a photograph violates another party's copyright.

It is the member's responsibility to obtain any and all permissions required to use, post and grant the foregoing rights in all photographic and other material used in its listings. The member warrants that it is the owner of the copyright in such material or is authorized by the owner thereof to grant to us the rights therein contained and agrees to provide any proof of such rights to us that we may request. Each member further agrees that we may reproduce in whole or in part any photographic material supplied by such member in the promotion of either such member's property or the Site.

**28. Uses of Our Trademarks or Logos.**

There are limited ways in which a member may use our trademarks or logos in connection with a listing without specific prior written authorization. The following are general guidelines. It is usually permissible for you to refer to HomeAway or the name of one of our affiliate websites on which you list your property in a descriptive manner in your listing on the Site or in other permissible communications. For example, you might say "Check out my vacation rental on HomeAway," or "I list properties on HomeAway." However, you may not refer to HomeAway or any of our affiliates in any way that might lead someone to believe that your company, property, listing or site is sponsored by, affiliated with, or endorsed by HomeAway or one of our affiliates. For example, you may not say "HomeAway sponsors my vacation rental," or describe your property as "HomeAway's best vacation rental." You may not use the HomeAway name or one of our affiliates' names on any other website that lists vacation rentals without our prior written authorization.

The HomeAway name and logo and those of the HomeAway Group and our affiliates are trademarks or registered trademarks in the United States and other jurisdictions around the world. We generally do not permit the use of our names and logos, other than as described above or with our prior written authorization. If you want permission to use our name and/or logo in any other manner, including, without limitation, on any website, business card, signage, t-shirt, etc., or if you have other questions, you may visit [help.homeaway.com](http://help.homeaway.com).

**29. Hypertext Links.**

We reserve the right to refuse hypertext links to, or addresses of, other web sites from members' pages, and to remove links or web addresses without notice at our sole discretion. Further, we reserve the right to charge for hypertext links at any time.

**30. Substitution of Properties; Advertising More Than One Property; Property Managers.**

Each listing must relate to an individual and uniquely identified property, unless you purchased a listing package that expressly allows for substitution of properties. This means that:

- The property in a listing may not be substituted for another property without our consent. We may approve a request in our discretion if the property manager's contract for the property was terminated and the member provides sufficient proof, as requested by us, and completes any additional forms we may request. The type and term of the listing for any substituted property shall be the same as the type and term of the

originally-listed property (i.e., the term will not be extended past the original term). If a member submits changes to an existing listing that, if approved, would substantially alter the listing to make it that of another property, then we have the right to terminate the listing and may choose, in our sole discretion, to retain any fees associated previously existing listing as compensation for the violation of this condition.

- The listing cannot be a mere example of properties in a given area. Only one property can appear on each listing, unless it is a property with multiple rental units and additional listings are purchased. We reserve the right to amend the copy or remove any listing when more than one property is described in such listing, and may choose, in our sole discretion to retain any fees associated such non-conforming listing as compensation for the violation of this condition.

### **31. Payment Method Requirements; Bank and Credit Card Fees.**

No member may request any traveler to mail cash, or utilize any instant-cash wire transfer service such as Western Union or MoneyGram in payment for all or part of a property rental transaction. Any violation of this term or any other unacceptable payment methods that may be posted on the Site may result in the immediate removal of the non-conforming listing from the Site without notice to the member and without refund. From time to time, we may become aware of users attempting to conduct a transaction that would involve an unauthorized payment method or a fraudulent payment method. Ideally, we hope to be able to assist users in avoiding such transactions, but we assume no liability or responsibility to do so or to inform users of any such actual or suspected activity.

Users' bank or credit card companies may impose certain fees or charges, including, but not limited to, foreign transaction fees, related to any rental of a property. It is the user's obligation to review any agreement with its bank or credit card company concerning any such fees.

### **32. Subscription Payments; Automatic Renewal of Subscription Payments.**

Payment for subscription listings must be made to us in U.S. Dollars paid either by major credit or debit card, PayPal, or a check drawn on a U.S. bank. For any subscription paid for by credit card or PayPal, such subscription shall automatically renew at the expiration of the then-current term for an additional term of the same duration (as the previous term) and at the then-current non-promotional subscription rate. If such subscription was purchased by check or another form of payment other than by credit card or PayPal (if such other payment form was permitted), such subscription shall not be automatically renewed. The automatic renewal feature allows your service to remain uninterrupted at the expiration of your then-current term. If you wish to turn off auto-renewal, you must log on to your account and manually turn off auto-renewal in your owner dashboard at least five (5) days prior to expiration of the then-current term. Upon any such turning off of auto-renewal, your subscription will remain active through the expiration of your then-current subscription term; however your subscription will not be automatically renewed upon the expiration of your then-current term. If your subscription does not auto-renew or expires at the end of your then-current subscription term and you desire to renew your subscription, you will be required to pay the then-current non-promotional subscription rate to renew your subscription or to activate a new subscription.

If you do not turn off auto-renewal and you continue to use our subscription service, you re-affirm and authorize us to charge your form of payment at the end of each subscription term for an additional term of the same duration as the initial term and at the then-current, non-promotional subscription rate for the same product or service.

If the product or service that you last purchased has changed in any way or is no longer offered, you agree and authorize us to charge your form of payment at the renewal of your subscription term for a product or service that is the most similar, as determined by us, to the product or service that you previously purchased, even if the price of such product or service is not the same as the prior product or service that you purchased. You agree to be responsible for any such charges, and we reserve the right to obtain payment directly from you if necessary. If you wish to change your form of payment to be charged or if your form of payment information otherwise changes, see [help.homeaway.com](http://help.homeaway.com) for information on updating the payment information in your owner dashboard, as applicable or to provide the new or different form of payment information.

If a Site enables you to list your property on a basis other than by subscription, you agree to pay us compensation as described to you in the registration process, which compensation may be changed by us from time to time without notice by us displaying the compensation on the Site on which you registered for the listing. The registration process and additional notices you may receive from us may also provide additional terms and conditions for such listings.

### **33. Subscription Term and Refund Requests.**

All subscription listings are sold to run the full term that is chosen by the member. The term starts on the date that the member submits the full or initial (as applicable) payment and expires one year thereafter. For example, for an annual subscription term, if the member submits payment for the subscription on July 1st, the subscription would expire on June 30 of the following year. If you renew your subscription listing, or if your subscription listing automatically renews, your listing will remain online for the new subscription period without refund.

Generally, no refunds are available unless a member qualifies for a refund under any special program we may have in effect. If you believe you qualify for a refund, you may contact customer support by sending your request to the address listed under "Contact Us" above and include your listing number, and your reason for requesting a refund. We will then determine, in our sole discretion, whether any refund is due. If you sell your property and no longer wish for the listing to remain online, please contact us and we can remove the listing; however, no refund will be owed.

### **34. Additional Terms Applicable to Pay-Per-Booking Listings.**

A description of the features and applicable fees that will apply to pay-per-booking listings will be displayed under the "List Your Property" tab of the Site offering such product, when made generally available. Pay-per-booking listings are subject to the additional terms, conditions and requirements set forth during the registration for such listing, including those of our third party providers. Online booking and payments is required for all pay-per-booking listings. Online payments provided by third-party providers are subject to the terms and conditions and privacy policies of such providers.

Pay-per-booking listings may be converted to subscription listings at any time; however any bookings already made prior to conversion shall remain subject to applicable pay-per-booking fees. Cancellation policies are required for all pay-per-booking listings, and requirements for such cancellation policies shall be displayed through the "List Your Property" tab of the Site offering the pay-per-booking listing.

### **35. Distribution of Listings to Third Party Websites.**

To enable members to obtain broader distribution of their properties, we may provide your listing information and content, or otherwise provide for the distribution of your listing on a third party website. Additional terms and conditions may apply to such distributions, as we may notify you of via your owner dashboard or email.

### **36. Termination of Listings; Other Remedies.**

If, in our sole discretion, any member submits unsuitable material to our Site or into our database, is not abiding by local rental regulations and is creating a nuisance in its community, misuses the Site or our online system or is in material breach of these Terms, we reserve the right to limit the member's use of the Site, impact the member's listing(s) search position, and/or terminate such member's listing immediately without refund. In addition, if we become aware of or receive a complaint or a series of complaints from any user or other third party regarding a member's listing or rental practices that, in our sole discretion, warrants the immediate removal of such member's listing from the Site (for example, and without limitation, if a member double-books a property for multiple travelers on the same date, or engages in any practice that, in our sole discretion, would be considered deceptive, unfair or improper within the vacation rental industry or in an online marketplace for vacation rentals, if we determine or suspect that the member's payment-related practices or procedures are not secure, legal or otherwise proper, or if we receive a complaint that any listing's

content infringes on the rights of a third party), then we may immediately terminate such member's listing(s) or subscription(s) without notice to the member and without refund. We assume no duty to investigate complaints. Finally, if any member is abusive or offensive to any employee or representative of the HomeAway Group, we reserve the right to terminate such member's listing(s) or subscription(s) immediately without refund.

In addition to reserving the right to terminate any listing, HomeAway reserves all rights to respond to any violation of the Terms or misuse of the Site by, including, but not limited to, hiding a listing from the search results, marking a member as "out of office," and removing or changing information that may be false or misleading.

Additionally, you agree to defend and indemnify HomeAway, its affiliated companies, and any of their officers, directors, employees and agents from and against any claims, causes of action, demands, recoveries, losses, damages, fines, penalties or other costs or expenses of any kind or nature including but not limited to reasonable legal and accounting fees, brought by third parties as a result of:

- your breach of these Terms or the documents referenced herein;
- your violation of any law or the rights of a third party; or
- your use of this Site.

---

[Site Map \(/info/sitemap\)](#) [Media Center \(/info/media-center\)](#) [Affiliates \(/lp/affiliates\)](#) [Find A Rental \(/info/travelers\)](#) [About Us \(/info/about-us\)](#)  
[Homeowners \(/info/homeowners\)](#) [Investors \(http://investors.homeaway.com/\)](http://investors.homeaway.com/) [Careers \(https://www.homeaway.com/careers\)](https://www.homeaway.com/careers) [Getting Started \(/info/getting-started\)](#)  
[Travel Ideas \(/info/travelers/travel-ideas\)](#) [HomeAway Reviews \(https://www.trustpilot.com/review/www.homeaway.com\)](https://www.trustpilot.com/review/www.homeaway.com)

Use of this website constitutes acceptance of the HomeAway.com Terms and Conditions (<https://www.homeaway.com/info/about-us/company-info/legal/terms-conditions>) and Privacy Policy (<https://www.homeaway.com/info/about-us/company-info/legal/privacy-policy>).

© Copyright 2006-Present HomeAway.com, Inc. All rights reserved.



## CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **DECLARATION OF BILL  
FURLONG IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER**

on:

J. Scott Moede  
Portland Office of City Attorney  
1221 SW 4th Ave., Ste. 430  
Portland OR 97204  
Email: [scott.moede@portlandoregon.gov](mailto:scott.moede@portlandoregon.gov)

Of Attorneys for Defendant

☒ by causing a copy thereof to be emailed to said attorney's address on the date set forth below, after said attorney consented to service by email.

Dated this 23rd day of January, 2017.

DAVIS WRIGHT TREMAINE LLP

By s/ Tim Cunningham

Gregory A. Chaimov, OSB #822180  
gregorychaimov@dwt.com  
Telephone: 503-778-5328  
Tim Cunningham, OSB #100906  
timcunningham@dwt.com  
Telephone: 503-778-5386  
Facsimile: 503-778-5299

James C. Grant (*pro hac vice* application to be filed)  
jimgrant@dwt.com  
Ambika K. Doran (*pro hac vice* application to be filed)  
ambikadoran@dwt.com  
Tom Wyrwich (*pro hac vice* application to be filed)  
tomwyrwich@dwt.com  
1201 Third Avenue, Suite 2200  
Seattle, Washington 98101  
Telephone: (206) 757-8096  
Facsimile: (206) 757-7096

Attorneys for Plaintiff HomeAway.com, Inc.